

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
ACCERIS COMMUNICATIONS CORP.)
For Authority to Issue Debt.)
_____)

DOCKET NO. 05-0046

DECISION AND ORDER NO. 21963

Filed August 5, 2005
At 8 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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STATE OF HAWAII

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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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In the Matter of the Application of)	
ACCERIS COMMUNICATIONS CORP.)	Docket No. 05-0046
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For Authority to Issue Debt.)	Decision and Order No. 21963
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DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-17 and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, subject to a condition described herein.

I.

Introduction

ACCERIS COMMUNICATIONS CORP. ("Acceris") requests commission approval to participate in a certain debt financing arrangement, described more fully below ("Proposed Financial Transaction"), pursuant to HRS § 269-17.¹

Acceris served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate stated, in its Statement of Position, filed on May 26, 2005

¹Acceris' Application, filed on February 17, 2005 ("Application").

("Statement of Position"), that it does not object to the Proposed Financial Transaction, subject to one qualification, discussed below.

II.

Background

A.

Description of Subject Entity

Acceris is a Delaware corporation that is presently authorized to provide resold intrastate telecommunications services in the State of Hawaii (the "State" or "Hawaii").² Its principal place of business is located at San Diego, California.

B.

Proposed Financial Transaction

Acceris' Proposed Financial Transaction is described as a three (3) year Revolving Fixed Price Convertible Facility in the aggregate principal amount of \$10,000,000 plus interest (Wall Street Journal Prime plus three per cent (3%), subject to a floor of six per cent (6%)).³ Acceris represents that the proceeds from the Proposed Financial Transaction will provide it with greater flexibility to pursue, without limitation:

²Decision and Order No. 18089, filed on September 28, 2000, in Docket No. 00-0208. As stated in Decision and Order No. 21648, filed on February 15, 2005, in Docket No. 04-0347, Acceris was formerly known as WorldxChange Corp. ("WorldxChange"), and WorldxChange was formerly known as PT-1 Counsel, Inc.

³Application at 3.

(1) expansion of its telecommunications networks; (2) improvement of customer service, billing, financial reporting and other management information systems; (3) possible acquisitions, future investments or strategic alliance; and (4) access to additional working capital.⁴ Acceris also intends to grant a security interest in all of its assets as a result of the Proposed Financial Transaction.⁵

Acceris represents that approval of the above-described transaction (1) "will enhance [Acceris'] ability to compete in the market for telecommunications services in Hawaii"; (2) "will give [Acceris'] customers access to the financial resources it needs to introduce new products and services and to respond to the competitive environment"; and (3) "will not result in any changes to rates or services."⁶

C.

Consumer Advocate's Statement of Position

The Consumer Advocate suggests that the Proposed Financial Transaction, described above, triggers both HRS § 269-17 and HRS § 269-19.⁷ Nonetheless, in its Statement of Position, the Consumer Advocate recommends that the commission waive the regulatory requirements under HRS §§ 269-17 and 269-19 or, in the alternative, approve such transactions. In support of

⁴*Id.*

⁵*Id.*

⁶*Id.* at 4-5.

⁷Statement of Position at 3.

its recommendation, the Consumer Advocate, among other things, states:

1. Acceris is a non-dominant reseller of intrastate telecommunications services;⁸
2. The Proposed Financial Transaction will be in the public interest because the financing will enhance Acceris' ability to compete in the market for telecommunications services in Hawaii by providing access to financial resources to introduce new products and services and to respond to the competitive environment;⁹
3. The Proposed Financial Transaction is not expected to result in any negative effects on Acceris' customers;¹⁰ and
4. If there are any adverse consequences from the Proposed Financial Transaction, consumers in Hawaii will be able to obtain the same service from another service provider.¹¹

In addition, the Consumer Advocate qualifies its recommendation by stating that the commission should require Acceris to immediately satisfy the specified deficiencies noted in Decision and Order No. 21648, filed on February 15, 2005, in

⁸*Id.* at 5.

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

Docket No. 04-0347 ("Decision and Order No. 21648"), and as reiterated in the commission's May 13, 2005 letter.¹²

III.

Discussion

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months. This section permits the proceeds of such debt to be used only for the acquisition of property or for the construction, completion, extension, or improvement of or addition to the utility's facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expending for the foregoing described purposes. Furthermore, pursuant to HRS § 269-17, "[a]ll stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility corporation not payable within twelve [(12)] months, issued without an order of the commission authorizing the same, then effect, shall be void."

¹²*Id.* at 2. Decision and Order No. 21648 required Acceris to, among other things, file (1) its December 2004 public utility fee, pursuant to HRS § 269-30, and (2) its annual telecommunications relay service ("TRS") contribution for the period July 1, 2004 to June 30, 2005 by March 15, 2005. The record indicates that Acceris complied with this requirement, albeit late. As such, we deem the Consumer Advocate's qualification as moot. Nonetheless, the commission admonishes Acceris that its failure to timely comply with the commission's orders may result in further regulatory action including, without limitation, order to show cause proceedings.

HRS § 269-19 requires a public utility corporation to obtain our consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property. Similar to HRS § 269-17, HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Upon a review of the record¹³, we agree with the Consumer Advocate, and find and conclude that the Proposed Financial Transaction falls under the purview of HRS §§ 269-17 and 269-19. Notwithstanding these regulatory requirements, HRS § 269-16.9 also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

In this docket, we find, at this time, the telecommunications services currently provided by Acceris are fully competitive, and Acceris is a non-dominant carrier in Hawaii. We also find that the Proposed Financial Transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest

¹³We also take official notice of all commission records relating to Acceris and its predecessors, pursuant to HAR § 6-61-48

regulation. Thus, the commission concludes that the applicable requirements of HRS §§ 269-17 and 269-19 should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.¹⁴ Similarly, based on these findings and conclusions stated above, we will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Acceris' Application fails to meet any of these filing requirements.

IV.

Orders

THE COMMISSION ORDERS:

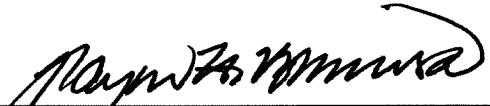
1. The requirements of HRS §§ 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Financial Transaction, described in Acceris' Application, filed on February 17, 2005.
2. HAR §§ 6-61-101 and 6-61-105 filing requirements, to the extent applicable, are waived.
3. This docket is closed unless otherwise ordered by the commission.

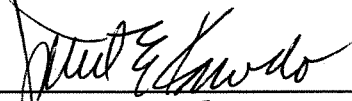
¹⁴See also, Decision and Order No. 18454, filed on March 28, 2001, in Docket No. 00-0443. The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-17 and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-17 and 269-19 is based on our review of Acceris' instant Application only. Thus, our waiver in this instance of the applicability of HRS §§ 269-17 and 269-19 should not be construed by any public utility, including Acceris, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

DONE at Honolulu, Hawaii August 5, 2005.

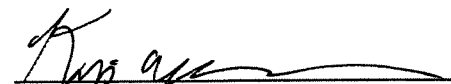
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

05-0046.eh


CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21963 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

LANCE J.M. STEINHART, ESQ.
LANCE J.M. STEINHART, P.C.
1720 Windward Concourse, Suite 250
Alpharetta, GA 30005

Attorney for ACCERIS COMMUNICATIONS CORP.



Karen Higashi

DATED: August 5, 2005